

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 755 of 2002

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA

and

Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
Yes
 2. To be referred to the Reporter or not? Yes :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
Seen
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? Yes :

PATEL HARGOVINDBHAI HIRABHAI

Versus

JASHVANTBHAI MANILAL DANI

Appearance:

1. Misc.Civil Application No. 755 of 2002
MR KIRIT I PATEL for the applicant
MR PK JANI for Respondents No. 1 & 2
MR RC KODEKAR, AGP for Respondent No. 3
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CORAM : THE CHIEF JUSTICE MR. D.S.SINHA
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 24/07/2002

ORAL JUDGEMENT

(Per : THE CHIEF JUSTICE MR. D.S.SINHA)

Heard Mr.Kirit I.Patel, learned counsel representing the applicant, Mr.P.K.Jani, learned counsel appearing for the respondent nos.1 & 2, and Mr.R.C.Kodekar, learned counsel of the respondent no.3.

2. By means of instant application under Section 12 of the Contempt of Courts Act, 1971, hereinafter called "the Act", the applicant submits that the respondents are guilty of disobedience of the order dated 9th October, 2001, passed by the Gujarat Secondary Education Tribunal, Ahmedabad, hereinafter called "the Tribunal", in Application No. 205 of 2000, and urges that they be punished for contempt of the Tribunal.

3. The applicant is Headmaster serving at Shri Shreyas Kelvani Mandal Sanchalit G.L.Patel High School, Unjha, District: Mehsana. He moved an application dated 19th January, 2000, requesting the management of the School for grant of permission for voluntary retirement with effect from 31st May, 2000.

4. Subsequently, he addressed to the management another letter dated 14th April, 2000, seeking withdrawal of his application dated 19th January, 2000, seeking permission for voluntary retirement.

5. By its communication dated 26th April, 2000, the management informed the applicant that his request for voluntary retirement had been accepted, and papers had been forwarded to the concerned Department, and, as such, his request for withdrawal of the application could not be acquiesced. By another communication dated 30th May, 2000, the School informed the applicant that in view of his voluntary retirement, pursuant to his application dated 19th January, 2000, he stood retired from service after office hours of 31st May, 2000.

6. Aggrieved by the refusal of the management of the School to permit him to withdraw his application for voluntary retirement and consequential retirement, the applicant approached the Tribunal assailing the orders dated 26th April, 2000 and 30th May, 2000.

7. The Tribunal, vide its order dated 9th October, 2001, upheld the claim of the applicant, and quashed the orders dated 26th April, 2000 and 30th May, 2000. The

Tribunal also declared that keeping of the applicant out of employment from 1st June, 2000 and onward was null and void. The Tribunal, therefore, directed the management of the School to reinstate the applicant forthwith and to pay to the applicant his dues within a period of three months, from its own funds.

8. The directions of the Tribunal, contained in its order dated 9th October, 2001, were not complied with by the respondents within the stipulated time. The applicant, therefore, moved instant application under section 12 of the Act.

9. It is not in dispute that the applicant has been reinstated with effect from 2nd July, 2002. Thus, the direction of the Tribunal, so far as it relates to reinstatement of the applicant is concerned, stands complied with.

10. Pertaining to the direction of the Tribunal for payment of dues to the applicant, the stand of the respondents is that they have moved the Tribunal for its review, and the Review Application is pending. Thus, the direction has not attained finality. According to the respondents, the direction being sub judice, there is no willful disobedience of the order of the Tribunal amounting to contempt.

11. In the first instance, the learned counsel of the applicant contends that the Review Application of the respondents is not maintainable. Otherwise also, according to him, there being no interim order, either by the Tribunal or any competent Court of law, staying operation of the order dated 9th October, 2001, the respondents were bound to comply with the said order, and having failed to do so, they are guilty of willful disobedience and have exposed themselves to the punishment for contempt of the Tribunal.

12. Countering the submissions of the learned counsel of the applicant, Mr. P.K.Jani, learned counsel representing the respondent nos.1 & 2, submits that the Review Application of the respondents is maintainable, in view of the provisions contained in Clause 14 of The Gujarat Secondary Education Tribunal (Procedure) Order, 1974, hereinafter called "the Order", made by the Government of Gujarat in exercise of the powers under Section 39 of the Gujarat Secondary Education Act, 1972.

13. In the opinion of the Court, it is not necessary to examine the question of maintainability of the

application of the respondents seeking review of the order of the Tribunal, dated 9th October, 2001, inasmuch as, admittedly, there is no order by any competent Court of law or Authority staying operation of the order of the Tribunal, dated 9th October, 2001. In the absence of any order staying its operation, the directions contained in order of the Tribunal dated 9th October, 2001 have to be complied with. The order of the Tribunal, dated 9th October, 2001, having not been complied with, has become enforceable and executable in the manner prescribed by law. For enforcement of the order of the Tribunal, the appropriate Forum is Tribunal itself. The Tribunal is empowered to enforce and execute its order, and for doing so, it has powers of a Civil Court. Clause 14 of the Order provides that The Tribunal shall, in any matter not provided for in the Order, follow the procedure, as far as it is applicable, laid down in the Code of Civil Procedure, 1908, hereinafter called "the Code".

14. In *Girishchandra R.Bhatt v. Dineshbhai N. Sanghvi*, reported in 1996(1), G.L.H. at Page 523, this Court has firmly ruled that the Tribunal had same powers of enforcement and execution of its order, as are conferred on the Civil Courts under the provisions of the Code. Thus, there is no doubt that the applicant has remedy of approaching the Tribunal for enforcement and execution of the uncomplied part of the order of the Tribunal, dated 9th October, 2001.

15. The Court feels that the applicant is attempting to use the contempt jurisdiction of the Court for executing the order of the Tribunal, dated 9th October, 2001, which is not permissible in law. In somewhat similar circumstances, in its decision rendered in *(The) Alahar Co.operative Credit Service Society v. Sham Lal*, reported in (1995)2 G.L.H. at Page 550, the Hon'ble Supreme Court clearly and unequivocally ruled that the contempt proceedings are not intended to be a substitute of the execution process. Again, in *R.N.Dey and others v. Bhagyabati Pramanik and others*, reported in (2000)4 Supreme Court Cases at Page 400, the Hon'ble Supreme Court observed thus :

"The weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of the Court's dignity and majesty of law.

Further, an aggrieved party has no right to insist that the Court should exercise such jurisdiction as contempt is between a contemner and the Court."

[Emphasis supplied]

16. On the facts and circumstances of the case, and keeping in view the law laid down by the Hon'ble Supreme Court in its two decisions, viz. (i) (The) Alahar Co-operative Credit Service Society v. Sham Lal (supra), and (ii) R.N.Dey and others v. Bhagyabati Pramanik and others (supra), the Court is clearly of the opinion that no case for initiating proceedings against the respondents for contempt is made out. The application lacks substance. It is rejected accordingly. Notice is discharged. There is no order as to costs.

(D.S.Sinha, C.J.)

(J.M.Panchal, J.)

(patel)